IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 9TH MARCH 2007 / 18TH PHALGUNA 1928

WP(C).No. 2256 of 2007(R)

AGAINST THE ORDER IN EP 33/2006 IN
OS.131/1999 of MUNSIF COURT, KANJIRAPPALLY
.....

PETITIONER:

JOCY THOMAS, S/O.JOHN THOMAS,
KUNNUMPURATH HOUSE, CHIRAKADAVU VILLAGE,
KOTTAYAM DISTRICT.

BY ADV. SRI.TITUS MANI
SRI.S.SURAJ (PALATHANATHU)

RESPONDENTS:
----

1. **KAMALAKSHI, KUTTUVELIL,**
   CHIRAKADAVU VILLAGE, KANJIRAPPALLY TALUK,
   KOTTAYAM DISTRICT.

2. **LALITHAMBIKA, D/O.KAMALAKSHI**
   KUTTUVELIL, CHIRAKADAVU VILLAGE,
   KANJIRAPPALLY TALUK, KOTTAYAM DISTRICT.

3. **VALLEY, D/O.KAMALAKSHI,**
   KUTTUVELIL, CHIRAKADAVU VILLAGE,
   KANJIRAPPALLY TALUK, KOTTAYAM DISTRICT.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.P.BALACHANDRAN, J.

- -

W.P.(C)NO.2256 OF 2007

- -

Dated this the 9th day of March 2007

JUDGMENT

Decree holder in O.S.131/1999 on the file of the Munsiff's Court, Kanjirappally is the petitioner. He challenges in this writ petition Ext.P2 order passed by the execution court refusing to render assistance to put up a permanent boundary wall separating the plaint schedule property from the property of the judgment debtor. The prayer was disallowed by the execution court for the reason that the decree does not provide for putting up a boundary and therefore the execution court can not render assistance to put up a boundary wall as prayed for. Ext.P1 is the decree and the decreetal portion is extracted below for easy reference.

> " (a) The plaintiff is entitled to recover an amount of Rs.360/- (Rupees three hundred and sixty only) as damages from the defendants with 6% interest from the date of suit till the realisation of the amount.
>
> (b) The defendants are restrained by a decree of permanent prohibitory injunction from trespassing into the plaint schedule property and from committing any waste therein and from cutting open a new way through plaint schedule property and from using any portion of plaint schedule property as a way and from destroying the boundaries of the plaint schedule property and from committing any act which will disturb the peaceful possession of plaintiff over that plaint schedule property.

(c) Ext.C3(a) plan will form part of the decree.

(d) The plaintiff is entitled to recover costs of the suit from the defendants."

2. The decree restrains judgment debtor from destroying the boundaries of the plaint schedule property and from committing any act which will disturb the peaceful possession of the plaintiff over the plaint schedule property. The decree holder has no case that any boundary wall or fence was in existence at the time when the suit was filed and the decree was passed and that after the decree it was destroyed by the judgment debtor. It is contented by the counsel for the petitioner that the decree restrains the judgment debtor from committing any act which will disturb the peaceful possession over the plaint schedule property and that it is to enable the property being possessed peacefully without disturbance from the judgment debtor that the petitioner/decree holder attempted to put up a fence and that was objected to by the judgment debtor and that was why he prayed for the relief of putting up a permanent separating wall separating his property from the property of the judgment debtor. It is worthy to note that

what the petitioner/decree holder wanted was only decree restraining the respondent/judgment debtor from destroying the boundaries meaning thereby the then existing land marks which demarcated his property from the property of the defendant. In as much as he has no case that the said boundary was tampered with or altered by the respondent/judgment debtor, he cannot have any relief as prayed for and as the decree does not permit putting up of any boundary no assistance can be sought for from the execution court to put up a boundary as prayed for. The execution court was rightly dismissing the prayer to put up boundary wall with the assistance of court separating the plaint schedule property from the property of the respondent/judgment debtor. The order so passed by the execution court is correct, legal and proper. It does not deserve to be interfered with this writ petition.

In the result, I dismiss this writ petition.

K.P.BALACHANDRAN, JUDGE

jes